



# **Investigations into Deaths in Custody and Use of Force Incidents**

*August 17, 2016*

**Fiscal Year 2016 Report to Congress**



**Homeland  
Security**

*U.S. Customs and Border Protection*

# Message from the Deputy Commissioner of CBP

August 17, 2016

I respectfully submit the following annual 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 requirements in the Explanatory Statement and House Report 114-215 accompanying the *Fiscal Year (FY) 2016 Department of Homeland Security Appropriations Act* (P.L. 114-113). 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

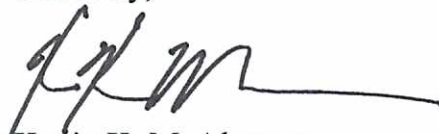
The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

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', with a long horizontal line extending to the right.

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

# Executive Summary

The use of force by law enforcement agencies is a dominant presence in daily news headlines. There are times in law enforcement when some level of force must be used to safeguard the public or to protect an officer or agent.

Every law enforcement agency is part of the ongoing and intense debate about how, when, where, and under what conditions officers and agents should use force. CBP takes its law enforcement responsibilities very seriously.

Over the past year, CBP has brought about many changes regarding use of force accountability and transparency. CBP has implemented policy changes, revamped its training, stood up a new review process, and expedited the disclosure of basic incident information to the public. These actions are critical to achieving CBP's mission and warranting the trust of the American people.

For example, 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. Since February 2015, CBP began using its Use of Force Incident Team (UFIT) to conduct thorough investigations in response to use-of-force incidents. Following a criminal declination by Federal or local prosecutors, the investigation results are presented to the National Use of Force Review Board (NUFRB) 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 NUFRB, recommendations are forwarded to the affected CBP component to, if appropriate, affect policy enhancements, make training updates, and identify best practices based on the recommendations.

CBP reports 10 deaths in FY 2015 as the result of use of force by CBP law enforcement personnel. Additionally, one individual died in custody as a result of a pre-existing medical condition, and another committed suicide in a CBP holding facility. A third individual became unresponsive shortly after being apprehended by Border Patrol agents and later died from heatstroke.



# 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 the Joint Explanatory Statement and House Report 114-215 accompanying the *Fiscal Year (FY) 2016 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-113).

The Joint Explanatory Statement states:

Per direction in the House report, CBP shall ensure that its holding facilities are in full compliance with the Department's Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; include funding estimates for such compliance activities in the fiscal year 2017 budget justification; report to the Committees regarding the death of any individual in CBP custody or following CBP use of force; and report annually on investigations related to such deaths.

House Report 114-215 states:

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, CBP officers, Border Patrol agents, and Air and Marine 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 more than 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 more than 1 million passengers and pedestrians for entry into the United States, apprehend more than 1,300 individuals attempting to enter the United States illegally, refuse entry to more than 240 inadmissible persons, seize more than 10,000 pounds of drugs, identify more than 500 individuals with suspected national security concerns, and arrest 21 wanted criminals at U.S. ports of entry.<sup>1</sup> CBP also maintains an international law enforcement presence with officers deployed to 15 airports in six foreign countries to conduct preclearance activities for passengers and goods bound for the United States.

CBP is charged with enforcing the Nation's laws while protecting the civil rights and civil liberties of every individual with whom it interacts. CBP's authority to enforce the law, even to the point of lethal force, appropriately bears the burden of accountability, which includes integrity and transparency.

CBP published its use of force policy in May 2014 and a use of force statistics webpage in October 2015. Furthering CBP's commitment to transparency, CBP updates the use of force data monthly, which includes a breakdown by sector, field office, and Air and Marine region.

CBP reports 10 deaths in FY 2015 as the result of use of force by CBP law enforcement personnel. Additionally, one individual died in custody as a result of a pre-existing medical condition, and another committed suicide in a CBP holding facility. A third individual became unresponsive shortly after being apprehended by Border Patrol agents and later died from heatstroke.

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<sup>1</sup> SNAPSHOT, A summary of CBP facts and figures, dated February 2015.

### III. Ongoing Investigations

Historically, fatal use of force incidents involving CBP employees have been investigated by external federal agencies including the Federal Bureau of Investigation (FBI) and the DHS Office of Inspector General (OIG), or by state or local authorities with primary jurisdiction.

Similarly, deaths of individuals in CBP custody not involving use of force, such as those at holding facilities, routinely are investigated by state and local authorities or the OIG. These types of deaths generally have involved a pre-existing medical condition or suicide. Local authorities, such as coroners or medical examiners, typically have more appropriate resources to determine the cause of death and to conduct the appropriate level of investigation.

On August 29, 2014, DHS Secretary Johnson signed a memorandum granting enhanced criminal investigation authorities to what is now the CBP Office of Professional Responsibility (OPR). A working group headed by OPR and including representatives from the U.S. Border Patrol, Air and Marine Operations, Office of Field Operations, and Office of Chief Counsel developed a robust investigative capability modeled after the FBI inspections program. OPR 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 OPR to investigate use of force incidents involving serious injury or death or, alternatively, to assist the external federal, state, or local agencies that assert primary investigative jurisdiction. The UFIT ensures that matters specifically related to CBP's use of force policy are addressed properly by investigators during the course of the incident investigation.

Federal or local prosecutors then review the investigative findings to determine if criminal prosecution is warranted. If criminal prosecution is declined, the case reverts to CBP for appropriate administrative review and action. The investigative findings are presented to the newly created CBP National Use of Force Review Board (NUFRB), which was established in December 2014. The NUFRB comprises senior officials from CBP's operational, legal, scientific, and training offices, as well as officials from the DHS OIG, the DHS Office for Civil Rights and Civil Liberties, the U.S. Immigration and Customs Enforcement OPR, and the Department of Justice Civil Rights Division. Through this review process, CBP strives to improve accountability and transparency of use of force incidents.



The NUFRRB reviews use of force incidents resulting in serious injury or death to:

- 1) Determine if the actions of the involved CBP employee(s) conform with CBP's use of force policy; and
- 2) Evaluate issues related to tactics, training, policy, and equipment.

If any concerns are identified by the NUFRRB, recommendations are forwarded to the affected CBP component and CBP's Law Enforcement Officer/Agent Safety and Compliance Directorate. Lessons learned from the NUFRRB are evaluated and considered for incorporation into law enforcement policies and training modules and are used to develop best practices for field personnel further. The Use of Force Center of Excellence, in coordination with CBP component offices, recommends enhancements to existing policy, creation of new policy, or updates to training or equipment.

Of the 13 deaths that occurred between October 1, 2014, and September 30, 2015, all were investigated by external federal, state, or local authorities. Of the 13, 10 were the result of use of force by CBP law enforcement personnel. Of the 10, 8 involved firearms, 1 involved an electronic control device, and 1 involved a vessel collision.

Breakdown of the 10 use of force cases:

- Pending prosecutorial determination – 6
- Prosecution declined; presented to the NUFRRB and pending final administrative disposition – 2
- Closed – Use of force determined to be consistent with CBP policy – 2

## V. Conclusion

CBP has implemented the UFIT and NUFRRB 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. CBP's UFIT and the NUFRRB process already are bringing about enhanced accountability and transparency and will continue to contribute to a more professional approach to policing in the 21<sup>st</sup> century. The inclusive philosophy of the NUFRRB—inviting representatives from outside agencies to participate—also makes the review process more rigorous. This openness and standardization will improve CBP operations, and strengthen CBP's relationship with its stakeholders and the public.

## V. Appendix – List of Acronyms

<b>Acronym</b>	<b>Definition</b>
<b>FBI</b>	Federal Bureau of Investigation
<b>CBP</b>	U.S. Customs and Border Protection
<b>DHS</b>	Department of Homeland Security
<b>FY</b>	Fiscal Year
<b>NUFRB</b>	National Use of Force Review Board
<b>OIG</b>	Office of Inspector General
<b>OPR</b>	Office of Professional Responsibility
<b>UFIT</b>	Use of Force Incident Team