



## U.S. Customs and Border Protection

February 2, 2022

MEMORANDUM FOR: Chief Patrol Agents  
U.S. Border Patrol

Special Agents in Charge  
Office of Professional Responsibility

FROM: Raul L. Ortiz   
Chief  
U. S. Border Patrol

Matthew Klein   
Assistant Commissioner  
Office of Professional Responsibility

SUBJECT: Interim Critical Incident Response Guidance

The purpose of this memorandum is to provide joint guidance from senior leadership of the U.S. Border Patrol (USBP) and CBP's Office of Professional Responsibility (OPR) regarding the command and control of USBP Critical Incident Teams (CITs) when responding to incidents under the purview of OPR. In accordance with CBP policy, OPR has primary responsibility for overseeing responses to serious use of force incidents, CBP-involved deaths, and other critical incidents involving serious injuries or deaths.<sup>1</sup> As a premier federal law enforcement agency, CBP is committed to accountability and transparency in its actions. Nowhere is this more important than when CBP is involved in an incident resulting in serious injuries or deaths. USBP CITs routinely provide *specialized and vital* support to OPR ensuring scenes are processed and evidence is collected to the highest standard. This is especially important when critical incidents occur in locations where other agencies are either unwilling or lack the technical capabilities to respond.

Clear command and control are required to protect OPR's independent oversight role when utilizing the specialized capabilities of CBP components, including USBP CITs. Attachment A to this memorandum identifies the types of incidents for which OPR has primary investigative responsibility. To the extent USBP CIT personnel respond to these incidents to provide specialized scene processing or evidence collection capabilities, it must be done so at the direct request of OPR personnel and under the guidance of the OPR incident commander (usually the

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<sup>1</sup> CBP Directive 4510-038, *Response to Use of Force Incidents*, dated July 27, 2015; Assistant Commissioners Klein's memorandum titled *CBP Unified Response to Use of Force Critical Incidents*, dated January 26, 2021; CBP *Notification and Review Procedures for Certain Deaths and Deaths in Custody*, dated May 26, 2021.

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special agent in charge or another OPR supervisor). Reports generated because of CIT activities will be documented within OPR channels and published as part of OPR's final report.

While each incident may differ, and local response procedures may vary, the following guidelines should be followed:

1. If CIT team personnel are notified of a critical incident, they will immediately notify the OPR duty agent to determine whether a response is required. CIT teams will not respond to a critical incident unless specifically requested to do so by the OPR duty agent or an OPR supervisor
2. OPR may request assistance from USBP CITs to respond to critical incidents involving other CBP components.
3. CIT personnel should coordinate with the OPR duty agent or supervisor before initiating any scene processing or evidence collection activities unless to do so could result in the loss or degradation of perishable evidence.
4. CIT personnel may provide support to other law enforcement agencies responding to the same incident after coordinating with the OPR duty agent or supervisor.
5. CIT personnel will not conduct any interviews without the express permission of the OPR duty agent or supervisor. This is essential to avoid even the appearance of a conflict of interest.
6. CIT investigative activities in support of OPR reviewable critical incidents will be documented as part of OPR's final report of investigation. Documents created by CIT will follow CIT review procedures before going to the local OPR SAC or designee for final review and approval. These reports will serve as a supplemental record to OPR's final report of investigation.
7. Nothing in this memorandum impacts existing CIT procedures for responding to incidents not reviewable by OPR.

Over the coming months, you can expect to see further guidance and updates as USBP, OPR, CBP Laboratories and Scientific Services (LSS), and other offices work collaboratively to standardize training, equipment, and procedures related to critical incident response. Within USBP, this effort will be led by a newly appointed headquarters level program manager.

We extend our sincere appreciation to all CIT team members and OPR special agents who continuously answer the call of duty, around the clock, to ensure appropriate oversight for CBP's enforcement mission.

# Attachment A

## Critical Incident Definitions

**Critical Incident:** Any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or large media attention

**Serious Injury:** Physical injury that involves medical treatment at a facility.

## OPR Reviewable Critical Incidents

**Reportable Death:** See chart below

**Use of Force Incident:** Any use of force incident that results in serious injury or death.

**Pursuit Related Incident:** Any incident that involves a CBP pursuit which results in any injuries or death.

**Transportation Incident:** Any incident that occurs during the transportation of detainees by a CBP employee or CBP contractor that results in injury or death to a detainee.

**On-Duty Death of CBP Employee**

| In Custody <sup>1</sup> (Reportable)   | Not in Custody (Reportable)  | Not Reportable  |
|--|--|---|
| <p>Subject dies in the process of being physically detained by CBP</p> <p>Subject dies after being detained or arrested or while being escorted to a CBP vehicle</p> <p>Subject dies due to vehicle collision, is struck by a vehicle, or dies by any other means while being actively pursued by CBP</p> <p>Subject dies due to actions of CBP while attempting to detain or arrest subject (e.g., struck by CBP vehicle)</p> <p>Subject dies while being transported by, or in the custody of, a CBP contractor</p> <p>Subject dies in a CBP holding facility or in route to a CBP holding facility</p> <p>Subject dies as a result of any use of force by CBP personnel</p> <p>Subject dies while undergoing secondary inspection or detained by CBP personnel for any other reason</p> <p>Subject dies after being admitted to a medical facility while still in CBP's legal custody<sup>2</sup></p> | <p>Subject dies while attempting to elude CBP but not being actively pursued (including falls from border barriers)</p> <p>Subject dies before, during, or after primary or outbound inspection at a port of entry (unless referred to secondary or due to use of force)</p> <p>Subject dies before, during, or after primary inspection at a USBP checkpoint (unless referred to secondary or due to use of force)</p> <p>Subject that is not detained or arrested dies while being transported in a CBP-owned vehicle or other conveyance with the sole purpose of obtaining immediate medical care</p> <p>Subject dies while processing of import/export paperwork or while paying import/export fees</p> | <p>Subject discovered in medical distress and dies in the field or in route to hospital (not in a CBP vehicle)</p> <p>Subject discovered in medical distress and dies during initial lifesaving efforts at hospital</p> <p>Remains discovered by CBP personnel</p> <p>Discovery of deceased individuals by other agencies</p> <p>Deaths resulting from an enforcement action in which CBP personnel did not participate</p> <p>Subject found deceased by CBP personnel in connection with a search and rescue operation</p> |

<sup>1</sup> Definitions based on Death in Custody Reporting Act of 2013 (PL 113-242) and Federal Death in Custody Reporting Program guidelines established by USDOJ

<sup>2</sup> Specifically required by H. Rept. 116-458, Department of Homeland Security, Appropriations Bill, 2021. Applies to instances in which the decedent was detained in a CBP facility or injured during a CBP enforcement action prior to their hospitalization.