



December 2, 2022

Alejandro Mayorkas, Secretary, U.S. Department of Homeland Security
Troy Miller, Acting Commissioner, Customs and Border Protection
Peter Mina, Acting Officer, DHS Office for Civil Rights and Civil Liberties
Matthew Klein, Assistant Commissioner, CBP Office of Professional Responsibility
3801 Nebraska Ave., NW
Washington, DC. 20016

Via Email

Re: Border Patrol Collusion in Texas Migrant Arrest Program under “Operation Lone Star”—Urgent Need for Immediate End to Collusion

Dear Secretary Mayorkas, Acting Commissioner Miller, Acting Officer Mina, and Assistant Commissioner Klein,

Border Patrol agents in south Texas have been colluding with Texas Department of Public Safety (DPS) officers in Texas’ program targeting migrants for arrest on state misdemeanor trespass charges. One in four trespass arrests under Texas’ anti-immigrant “Operation Lone Star” (OLS) program in August 2022 involved Border Patrol collusion with DPS. Alarmingly, in 35 instances, Border Patrol was plainly the initial apprehending agency and, instead of processing individuals for immigration purposes, transferred them to DPS for prosecution for trespass in the state’s OLS system.

Under Operation Lone Star, Texas state and local officials have created and implemented an extremely harsh system that targets Black and brown—primarily Latinx—migrants for arrest, prosecution, and enhanced punishment. This system was created under the guise of state criminal trespass law but with the explicit, stated goal of punishing migrants based on their immigration status. Texas Governor Greg Abbott explicitly contrasts this system to federal immigration policy, calling the Texas program “arrest and jail.”

To date, Texas has arrested more than 5,000 primarily Latinx individuals on state misdemeanor criminal trespass charges under OLS. The state has funneled these individuals into a separate criminal prosecution and detention system riddled with civil rights violations, including failure to appoint counsel and failure to timely file charges. Bonds are set at much higher rates than for all other misdemeanor trespass arrests in the state. Arrested individuals

typically languish in state prisons for weeks or months in abysmal conditions while awaiting their first court appearance, unable to pay an unaffordable bond. In short, the OLS trespass arrest system is riddled with civil rights violations. By design, it is a separate criminal system that treats Black and brown migrants arrested for trespass differently—placing them in separate jails (converted state prisons), processing them through a separate booking facility, assigning them separate public defenders on separate criminal dockets—and more harshly. And the nature of the program—state-sanctioned targeting of immigrants—has further fueled racist, anti-immigrant rhetoric and action in Texas. The Department of Justice is currently reviewing OLS for federal civil rights violations, including violation of federal anti-discrimination law.¹

Border Patrol agents in south Texas are deeply enmeshed in and instrumental to the OLS trespass arrest program—colluding with state Department of Public Safety (“DPS”) officers in OLS trespass arrests. Our analysis of one month of DPS officers’ sworn accounts of OLS trespass arrests demonstrates that Border Patrol was instrumental to one in every four OLS trespass arrests. In many cases, Border Patrol agents conduct apprehensions and then, instead of processing apprehended individuals for immigration purposes, turn the individual over to DPS for arrest on state misdemeanor trespass charges. In even more OLS trespass arrests, Border Patrol and DPS were both present, and adult men traveling without children were arrested on state trespass charges rather than being taken into immigration custody for immigration processing like any others apprehended. And in some cases, Border Patrol provided surveillance information to DPS that led DPS to effectuate trespass arrests. This collusion took place in every county in which OLS trespass arrests are currently occurring.

Border Patrol’s extensive collusion with DPS in OLS trespass arrests is deeply troubling and requires investigation by the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) and the Customs and Border Protection Office of Professional Responsibility (OPR). Border Patrol agents do not have authority to arrest individuals on state misdemeanor charges in Texas, as the Laredo Sector’s chief and assistant chief recently acknowledged to the Texas state legislature. Our understanding is that this collusion is also contrary to CBP policy. We request that CRCL and OPR investigate all instances of Border Patrol collusion in OLS trespass arrests from late July to late August 2021, described below, for violations of law and agency policy. This includes prioritizing investigation of state trespass arrests by Border Patrol agents in violation of law and policy—where Border Patrol agents effectuated apprehensions and then, instead of processing individuals for immigration purposes, turned them over to DPS for state misdemeanor criminal prosecution. Further, we request that DHS—including but not limited to CRCL and OPR—take all appropriate steps to end collusion with DPS in OLS trespass arrests and to remedy past civil rights violations by Border Patrol agents in OLS trespass arrests.

The OLS trespass arrest program violates civil rights in both design and implementation. It fans the flames of anti-immigrant hate in Texas, at a time when anti-immigrant rhetoric and

¹ Perla Trevizo, *DOJ Investigating Texas’ Operation Lone Star for Alleged Civil Rights Violations*, ProPublica, July 6, 2022, <https://www.propublica.org/article/operation-lone-star-doj-investigation-abbott>.

action are escalating. Simply put, Border Patrol agents are currently instrumental to Texas' effectuation of this program that engages in rampant civil rights abuses, that increases anti-immigrant system, and that attempts to supplant federal immigration policy. We found 91 arrests involving Border Patrol collusion in late July to late August 2022. Extrapolating from this data, Border Patrol collusion is likely responsible for hundreds of arrests in Texas' unlawful, discriminatory, and anti-immigrant trespass arrest system. DHS should cease all collusion with state and local officials in OLS trespass arrests, and transparently and publicly state a policy of non-collusion in Texas' OLS trespass arrest system.

I. Findings: Border Patrol Colluded with DPS in 25% of OLS Trespass Arrests from Late July to Late August 2022, Significantly Contributing to Texas' OLS Trespass Arrests.

In 25% of all OLS trespass arrest cases for one month—late July to late August 2022—Border Patrol agents colluded with DPS officers to effectuate the arrest. Our analysis of arrest affidavits demonstrates this significant collusion between Border Patrol agents and DPS officers. In 91 of the 368 OLS trespass arrests over the course of one month, Border Patrol agents played a key role—in many cases, in effectuating or contributing to the arrest, and in others, providing information that led to the arrest. When individuals are apprehended and both Border Patrol and DPS are co-located, Border Patrol does not take responsibility for all individuals for processing for immigration purposes. Rather, all eligible individuals—under Texas policy, single adult men traveling not as part of a family²—are funneled to DPS for arrest on state misdemeanor trespass charges as part of the OLS “catch and jail” system, while all individuals not eligible for arrest under OLS are channeled to Border Patrol custody. In many instances, Border Patrol turned apprehended individuals over to DPS—even in cases where DPS was *not* present at the scene of apprehension.

We analyzed all 368 arrest affidavits for trespass arrests under OLS for one month: from late July 2022 to late August 2022. For each trespass arrest under OLS, as for other warrantless arrests, the arresting officer writes a sworn affidavit describing the circumstances of the arrest and the reason that the arresting officer had probable cause to believe that the person arrested committed a crime. The 368 affidavits provide arresting officers' accounts of one month's worth of trespass arrests under OLS.³

² See, e.g., Email from Lieutenant Noe Fernandez, Texas Highway Patrol, Department of Public Safety, July 20, 2021, available at Jay Root (@byjayroot), Twitter (Aug. 17, 2021, 1:42 PM), <https://twitter.com/byjayroot/status/1427702319228104706>

³ Most arrests were conducted by state Department of Public Safety troopers; a handful were by Kinney County Sheriff's Office deputies. We did not find any examples in which an arrest affidavit described a Kinney County Sheriff's Office deputy colluding with Border Patrol. All collusion described in the arrest affidavits was between Border Patrol and Texas state law enforcement.

A. Border Patrol as Initial Apprehending Agency, Including When DPS Was Not Present, for OLS Trespass Arrests

In 35 arrests, or 38% of the arrests in which Border Patrol colluded with DPS, Border Patrol was the initial arresting or apprehending agency. In 29 arrests (31% of total arrests involving Border Patrol – DPS collusion), Border Patrol effectuated the arrest when DPS was not even *present* and nevertheless turned the individual over to a DPS officer for state misdemeanor trespass rather than process the individual for immigration purposes. DPS' officers accounts of how Border Patrol colluded in arrests include:

- **Webb County, July 27:** "Texas DPS Brush team members and Texas National Guard members were advised by U.S. Border Patrol that their remote surveillance system camera had spotted a group of criminal trespassers The remote surveillance system camera is located inside BONUGLI FARM PROPERTY, based on information provided by U.S. Border Patrol...U.S. Border Patrol agent CAREY MILLER then advised [a Texas law enforcement officer] that they had found four additional subjects inside the BONUGLI RANCH The four subjects were referred to the Texas DPS Brush Team Members...the coordinates of the location of where the subjects were found . . . were provided by [the] U.S. Border Patrol Agent."
- **Zapata County, Aug. 5:** "I [the DPS arresting officer] responded to a US Border Patrol ground sensor that was triggered by a group [of] 7 individuals that were inside the La Bendicion Ranch I along the DPS Brush Team responded to assist US Border Patrol We entered the ranch traveled . . . towards the location of where the ground sensor was triggered to assist US Border Patrol in attempt to track and locate the group of individuals. . . . Border Patrol conveyed that they were tracking the individual's footprints US Border Patrol managed to find and apprehend all 7 individuals (7 adult males) inside the La Bendicion Ranch in Zapata County. I along with the DPS Brush team arrived at the location of the apprehension of the 7 adult males. We properly identified all 7 individuals to be undocumented non-citizens." The individuals were then transferred to DPS custody and arrested by DPS on misdemeanor trespass charges.
- **Webb County, Aug. 10:** "United States Border Patrol entered the Bonugli Ranch with knowledge of several individuals known to be within the fenced radius. US National Guard Specialist . . . and I [the DPS arresting officer] . . . entered the property to secure the perimeter while the agents attempted to make contact. Several moments later, US Border Patrol Agents apprehended several subjects in the Bonugli Ranch."
- **Webb County, Aug. 19:** "I . . . Along with the DPS Brush Team, U.S. National Guard, and U.S. Border Patrol were tracking a group of approximately 8 subjects that were seen crossing the river from the Mexico side on to the US side near the Slaughter Property At approximately 01:35 US Border Patrol Agents were able to apprehend 7 male

subjects and one female subject . . . One female subjects was released to US Border Patrol Agents."

- **Webb County, Aug. 27:** DPS officers and a Texas National Guard member "were contacted by US Border Patrol Agent Kenneth Kuopa at the Pump N Shop Gas Station located at 2002 Zapata Hwy. in Laredo, TX. US Border Patrol Agent Kuopa stated that the had apprehended 3 male individuals inside the Bonugli Property and more specifically the Bonugli Pit area . . . Agent Kuopa discovered them, apprehended and placed them into custody then handed them over to us at the Pump N Shop Gas Station. . . I decided to inform the agent that we would take all 3 male individuals in for the criminal charge. US BP Agent Kuopa released the 3 male individuals to me and Trooper Pantoja."

B. Border Patrol and DPS Presence at Apprehension/Arrest and Border Patrol Prioritization of OLS Trespass Arrests Over Immigration Processing

In 41 arrests, or 45% of the arrests in which Border Patrol colluded with DPS, Border Patrol and DPS were both present for the arrest. Instead of Border Patrol taking the individuals into CBP custody for immigration processing, Border Patrol prioritized arrests under Operation Lone Star for misdemeanor trespass—ensuring eligible individuals were instead channeled into the OLS trespass arrest system. DPS officers' accounts of how Border Patrol colluded in these arrests include:

- **Kinney County, July 30:** "The affiant [the DPS officer authoring the arrest affidavit] was able to apprehend four passengers who had absconded from the pick-up, the affiant also observed 5 other passengers and the [driver] abscond from the vehicle. United States Border Patrol and Texas DPS Helicopter 116 were able to locate 5 passengers . . . and located the driver . . ." Female passengers were "released . . . to United States Border Patrol," while DPS "arrested the remaining passenger[s] . . . for Criminal Trespass in a disaster area."
- **Jim Hogg County, Aug. 18:** "Texas DPS Brush Team members and US Border Patrol responded to an activated border surveillance. . . . One of the males was a juvenile and turned over to the custody of Border Patrol."
- **Webb County, Aug. 21:** "I . . . Along with US National Guard . . . were notified US Border Patrol of a raft carrying a group that had made landfall by the Bonugli Farm. . . . A group of three individuals were spotted by US Border Patrol which had activated a remote surveillance system camera located inside the Bonugli Farm. . . . Two individuals were apprehended by US Border Patrol and [National Guard] . . . The male subject was released to Texas DPS custody."
- **Webb County, Aug. 22:** "I . . . along with [a US National Guard specialist] responded to a group of individuals that were spotted by US Border Patrol inside Slaughter Property. . . . We responded to assist US Border Patrol and US National Guard . . . who were already

inside the property waiting for the group which had activated a remote surveillance system camera . . . Five individuals were apprehended . . . by US Border Patrol and US National Guard.”

- **Webb County, Aug. 26:** “U.S. Border Patrol called out a raft heading towards the Bonugli Farm from Mexico. I . . . along with soldiers from Kilo Company (Texas Military Department) and U.S. Border Patrol entered the property from North access gate. . . . On the property there is also a tower operated by U.S. Border Patrol by the riverbanks. CBP Air and Marine code named Troy saw the group entered the property from the river bank and illegally entered the property. They spotted the group 20 yards from the scan tower. . . . The second group consisted of two people heading south into a depression also known as the pit and continued to walk southeast attempting to avoid TMD (Texas Military Department) and U.S. Border Patrol. . . . Troy came on the radio that one had gone back towards the river and began to swim back into Mexico. The other individual . . . was detained by TMD soldiers behind Sno Penguin attempting to make it to the road. A BP Agent advised me that one male was apprehended by TMD and if we wanted them to bring him over to us. I [the DPS officer] stated yes since they were part of the same criminal episode. He was brought over to me.”

C. Border Patrol Provision of Surveillance Information to DPS for Trespass Arrests

In 15 arrests, or 16% of the arrests in which Border Patrol colluded with DPS, Border Patrol provided surveillance information to DPS that led DPS to effectuate OLS trespass arrests. This includes information from Border Patrol helicopter surveillance, drone, and remote cameras. DPS officers’ accounts of how Border Patrol colluded in these arrests include:

- **Webb County, July 29:** “United States Border Patrol manned cameras were able to observe and call out via radio the positions and direction of travel of the group of individuals. The camera operator advised via radio that several subjects were running south toward Vine Street.”
- **Webb County, Aug. 4:** “I . . . along with [DPS and National Guard] were notified by Texas Guard and US Border Patrol of a group that had made landfall by the Bonugli Farm...A group of four individuals were spotted by US Border Patrol Air Drone which had activated a remote surveillance system camera located inside the Bonugli Farm.”
- **Webb County, Aug. 5:** DPS officer, DPS brush team, and Texas National Guard “were advised by U.S. Border Patrol that their remote surveillance system camera had spotted a group of approximately 20 criminal trespassers inside the Riverhill Investment Property LLC.”

- **Kinney County, Aug. 13:** “CBP helicopter Agent Persons assisted me with locating three adult males.”

II. Legal Analysis: Border Patrol Agents’ Actions Appear to Violate DHS Policy and the Law. As the Laredo Sector Leadership Has Recognized, Border Patrol Lacks Legal Authority to Arrest Individuals on Texas Misdemeanor Charges.

Border Patrol agents’ actions in colluding with DPS officers in OLS trespass arrests appear to be inconsistent with DHS policy. It is our understanding that DHS does not have a policy of colluding with DPS in OLS trespass arrests and in fact rejects such collusion. In October 2021, Border Patrol Chief Raul Ortiz told *Texas Monthly* that the OLS trespass arrest system was “a tremendous concern.” He explained that Border Patrol must “ensure that if migrants have a legitimate asylum claim that they’re able to put forth that claim, or if they have a credible fear claim with respect to some sort of trafficking abuse that there’s a pathway for them. I don’t know that all of that is being considered when a migrant is apprehended by another agency.” Chief Ortiz went on to state, “I really would prefer to see border security left to the border-security experts.”⁴

Chief Ortiz’s statements are at odds with Border Patrol agents’ actions in south Texas. As described above, Border Patrol agents in south Texas have turned migrants over to Texas state law enforcement rather than process them for immigration purposes many times—35 times in which Border Patrol was the apprehending agency in one month alone, including 29 times when DPS was not even present at the arrest. Arranging to meet a DPS officer at a gas station to transfer custody of 3 migrants rather than processing them for immigration purposes, as occurred in Webb County on August 27, is entirely contrary to Chief Ortiz’s statements about necessary Border Patrol actions and the rationale for them. They appear to be contrary to DHS policy. As Chief Ortiz describes, Border Patrol agents’ actions in colluding with OLS trespass arrests are contrary to agents’ mandate to ensure that individuals are processed for immigration purposes and have access to the range of legal protections for those fleeing violence and danger.

Additionally, Border Patrol agents’ actions—particularly in effectuating apprehensions and then transferring individuals to state criminal custody rather than processing them for immigration purposes—lack legal authority. Federal law does not provide Border Patrol agents acting pursuant to immigration powers with authority to arrest individuals for state misdemeanors. Border Patrol agents may “make arrests” for federal criminal offenses committed in their presence or “for any felony cognizable under the laws of the United States,” under federal law, in cases in which the agent “is performing duties relating to immigration laws at the time of the arrest and . . . there is a likelihood of the person escaping before a warrant can be

⁴ Aaron Nelsen, *Border Patrol Chief Raul Ortiz on the Crisis in Texas and Why Greg Abbott’s Operation Lone Star Concerns Him*, *Texas Monthly*, Oct. 21, 2021, <https://www.texasmonthly.com/news-politics/raul-ortiz-border-patrol-texas/>.

obtained for his arrest.”⁵ These are the only circumstances in which federal law authorizes immigration officers to make warrantless arrests.

Nor are state misdemeanor arrests by Border Patrol agents permitted under Texas law, even if Texas alone could authorize Border Patrol agents to carry out such arrests. Under Texas law:

A Customs and Border Protection Officer or Border Patrol Agent of the United States Customs and Border Protection or an immigration enforcement agent or deportation officer of the Department of Homeland Security is not a peace officer under the laws of this state.⁶

While some federal law enforcement officers “have the powers of arrest, search, and seizure under the laws of [Texas] as to felony offenses” generally, Border Patrol agents are not among them.⁷ Instead, Border Patrol agents have the authority to detain individuals only for certain specific state criminal offenses relating to public intoxication and only at “a port of entry . . . or at a permanent established border patrol traffic check point.”⁸

In fact, leadership of Border Patrol’s Laredo Sector recently publicly acknowledged this very limited authority that Border Patrol has to effectuate state arrests in Texas under state law. On November 15, 2022, Laredo Sector Chief Carl Landrum and Assistant Chief Col. Max Lopez appeared before a Texas legislative committee to request that the Texas legislature expand Border Patrol jurisdiction under state law to encompass state felony arrests. Chief Landrum acknowledged that the current law “limits us greatly to these designated locations.”⁹ It is not clear whether the Laredo sector leadership’s position on expanding Texas state law to authorize felony arrests by Border Patrol under state law is endorsed by Border Patrol leadership or consistent with Border Patrol policy.

What is clear, though, is that Laredo Sector leadership acknowledges that Border Patrol lacks authority even under state law to effectuate misdemeanor arrests. Border Patrol agents’ apprehension of individuals for Operation Lone Star state misdemeanor trespass arrests is not authorized by Texas law, and it is not authorized by federal law.

⁵ 8 U.S.C. § 1357(a)(5).

⁶ Tex. Code Crim. Pro. Art. 2.122(c).

⁷ *Id.* 2.122(a).

⁸ *Id.* 2.122(c).

⁹ Niki Griswold, *Border Patrol Requests Change to Texas Penal Code to Allow Agents to Enforce State Law*, Austin American-Statesman, Nov. 16, 2022,

<https://www.statesman.com/story/news/politics/state/2022/11/16/border-patrol-asks-texas-to-allow-agents-to-enforce-state-law/69639080007/>.

III. Conclusion: DHS Oversight Mechanisms Should Investigate Border Patrol Collusion in OLS Trespass Arrests, and DHS Should Publicly State a Policy of Non-Collusion in OLS.

In light of Border Patrol's extensive involvement in the deeply flawed Operation Lone Star trespass arrest system—which systemically and by design violates civil rights, and which is explicitly created to be contrary to federal immigration policy—we request that DHS immediately cease all collusion with the Texas Department of Public Safety in OLS trespass arrests. We also request that DHS cease all collusion with any other Texas state or local agency in OLS trespass arrests. Further, we request that DHS transparently and publicly state a policy of non-collusion in Texas' OLS trespass arrest system. The above findings are deeply troubling. The 29 arrests in which CBP effectuated an apprehension in which Texas state or local officers were not even present are particularly egregious and of the highest priority for internal DHS investigation. We further request that DHS:

- (1) Through CRCL and OPR, investigate all instances of Border Patrol collusion in OLS trespass arrests from late July to late August 2021 described in this complaint and the accompanying appendix for violations of law and policy;
 - a. In doing so, prioritize investigation of Border Patrol apprehensions of individuals and transfer of those individuals to DPS custody for state prosecution rather than processing of those individuals for immigration purposes;
- (2) Take all appropriate steps to immediately end collusion with DPS in OLS trespass arrests;
 - a. This may include recommendations from CRCL to prevent any further similar violations of law and policy, but the agency should act immediately to prevent any further collusion under OLS;
- (3) Take all appropriate steps to remedy past civil rights violations and any other violations of law and policy by Border Patrol agents in OLS trespass arrests; and
- (4) Publicly state a policy of non-collusion between Border Patrol and DPS in Operation Lone Star trespass arrests.
 - a. In doing so, reaffirm that Border Patrol lacks authority to effectuate such state arrests in Texas.

Thank you for your time and attention to this complaint. We look forward to your timely response.

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Sincerely,

Kathryn Huddleston, Staff Attorney
Bernardo Cruz, Staff Attorney
Savannah Kumar, Staff Attorney
Adriana Piñon, Legal Director
American Civil Liberties Union of Texas
P.O. Box 8306
Houston, TX 77288
713.942.8146
khuddleston@aclutx.org
brcruz@aclutx.org
skumar@aclutx.org
apinon@aclutx.org